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**From:**

**Sent:** Friday 7/9/2010 4:48 PM

**To:**

**Cc:**

**Subject:** RE: Lien discharge assistance

Hi

There is nothing in the Code, the regulations, or the IRM that requires the Service to apply a minority interest discount in discharge cases. In fact, there is no reference at all to the discount with regard to valuation for lien discharge purposes. Your email does not detail the basis of the attorney's conclusion that the discount (as well as force sale value) should apply here. I assume the attorney's reasoning relates to Rev.Rul. 93-12 and the use of minority interest discounts in the gift and estate tax context. However, the revenue ruling is, here, not on point factually or with respect to its conclusion.

The regulations under section 6325 do provide some guidance regarding valuation of the government's lien interest for discharge purposes:

Valuation of interest of United States. For purposes of paragraphs (b)(2) and (b)(4) of this section, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the appropriate official shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the appropriate official may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

Treas. Reg. 301.6325-1(b)(6). IRM 5.12.3.12 similarly provides for the discretionary use of forced sale value. Note that the application of forced sale valuation is not required--its use is determined on a case-by-case basis: I had a conversation with a lien analyst in the NO, and she indicated that a lien advisor should determine whether, in a particular case, (and to what extent) forced sale value should be used. Therefore, use force sale value is a determination for the lien advisor to make. You mentioned that the lien advisor had a conversation with a PALS. That is a good starting point. The lien analyst mentioned that there are also Collection personnel in the NO who can be a resource in addressing valuation issues.

You did not raise, but we also note that the co-owner of encumbered property can apply for a discharge under section 6325(b)(4). That provision enables an owner (other than the taxpayer) to make a deposit (or provide a bond) in the amount determined by the

Service, then seek judicial review under section 7426(a)(4). Discharge under any other provision is discretionary, and judicial review under section 7426(a)(4) is available only for discharges issued under section 6325(b)(4).

The foregoing has been approved by . If you would like to discuss the matter further, please contact me.